United Nations Convention on the Law of the Sea SPLOS/224

Meeting of States Parties

Distr.: General
4 April 2011

Original: English

Twenty-first [illegible]
New York, 13-[illegible] June 2011

Report on budgetary matters for the financial periods 2009-2010 and 2011-2012

Presented by the Registrar of the International Tribunal for the Law of the Sea

I. Performance report for 2009-2010

1. In June 2008, the eighteenth Meeting of States Parties approved the budget of the International Tribunal for the Law of the Sea for the financial period 2009-2010 in the amount of €17,515,100 (SPLOS/180, para. 1). In addition, the nineteenth Meeting of States Parties authorized the Tribunal to use part of the cash surplus from the 2007-2008 budget to finance additional appropriations (€207,450) to implement the new salary system for the members of the Tribunal for the period from July 2009 to December 2010 (SPLOS/200, para. 3). With a view to providing the Tribunal with the financial means necessary to consider cases in 2009-2010, in particular those requiring expeditious proceedings, the Meeting had approved an amount of €2,564,700 for case-related costs of the Tribunal (SPLOS/180, para. 3). This amount is included in the total appropriation indicated above, on the understanding that case-related costs should be used only in the event of cases being submitted to the Tribunal. The Meeting had further decided that a floor rate of 0.01 per cent and a ceiling rate of 22 per cent would be used in establishing the rate of assessment for States parties for the budget of the Tribunal for 2009-2010 (SPLOS/180, para. 5).

2. As shown in the performance report for the financial period 2009-2010 (see annex I to the present report), the total expenditure for that period stands at €15,829,392, representing 89.32 per cent of the total appropriations (€17,722,550), including the above-mentioned additional appropriation (€207,450) approved for 2009-2010. The underperformance of the budget for the period can largely be attributed to the optimum use of resources and the fact that, during the financial period 2009-2010, one urgent request for provisional measures, in Case No. 18, was submitted in proceedings to the Tribunal, and a request for an advisory opinion (Case No. 17) was filed before the Seabed Disputes Chamber, whereas the 2009-2010 budget made provision for proceedings in four urgent cases.

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3. Under "staff costs", savings amounting to €60,898 were made, largely owing to vacant positions in the Registry during the period in question. Within this section the expenditure for common staff costs exceeded the budget appropriation by €8,133. This overrun was absorbed by the redeployment of the appropriations in the same section.

4. Under the budget section "judges", an overexpenditure (€10,036) occurred in the budget line "annual allowances". This overexpenditure was due to the depreciation of the euro against the United States dollar and the increase in the net salary base for members of the Tribunal in 2010. An overexpenditure amounting to €44,005 also occurred in the budget line "judges' pension scheme". It was entirely due to the depreciation of the euro against the dollar. The approved appropriation for the judges' pension scheme was based on the dollar/euro exchange rate of 0.661 in March 2008, whereas, by the end of the financial period 2009-2010, the exchange rate had reached 0.761. This represents a decrease of 13.14 per cent in the value of the euro against the dollar. Out of the overexpenditures totalling €54,041 in the budget lines "annual allowances" and "judges' pension scheme", an amount of €23,295 was absorbed by the redeployment of appropriations in the same section, and the remainder of €30,746 was financed from the additional appropriation allocated to the section "judges" in the amount of €160,395. As a result this section shows a final balance of €129,649. These savings are composed of savings realized under special allowances owing to a reduction in the rate of daily subsistence allowance for Hamburg to €247 during 2009-2010, whereas the budget was based on the rate of €267. Savings were also made under the budget lines "travel to sessions" and "common costs".

5. Section 3, "representation allowance", shows a negative balance of €1,227. This overexpenditure is entirely due to the depreciation of the euro against the dollar during the budget period. It is proposed that this overrun be financed from section 2, "staff costs", which shows savings of €60,898.

6. It may be noted that, if the case-related costs are excluded, the performance rate for the financial period would be 97.52 per cent.

II. Action taken pursuant to the decision of the twentieth Meeting of States Parties concerning the adjustment of remuneration of the members of the Tribunal

A. Decision of the Meeting of States Parties

7. In June 2010, the twentieth Meeting of States Parties took a decision on the adjustment of the remuneration of the members of the Tribunal (SPLOS/215). The operative part of the decision reads as follows:

The Meeting of States Parties,

1. *Decides* to set, retroactively, effective 1 January, the annual net base salary of the members of the Tribunal at 166,596 dollars, with a corresponding post adjustment multiplier equal to 1 per cent of the net base salary, to which would be applied the post adjustment multiplier for Hamburg, taking into account the adjustment mechanism as established by the General

Assembly in its decision 62/547, without prejudice to future decisions on this matter;

2. *Also decides* that, on the occasion of future revisions to the annual net base salary of the members of the International Court of Justice that take place until the twenty-first Meeting of States Parties, the annual base salary of the members of the Tribunal shall be adjusted by the same percentage and at the same time;

3. *Further decides* that the Registrar shall report to the twenty-first Meeting of States Parties on all relevant implications, in a timely manner, concerning the present decision.

B. Revision of the annual base salary of the members of the International Court of Justice

8. The General Assembly, by its resolution 65/248 of 24 December 2010, approved a salary increase of 1.37 per cent for staff in the Professional and higher categories, as recommended by the International Civil Service Commission in paragraph 120 of its report for 2010 (A/65/30), to be implemented through the standard consolidation procedure, that is, by increasing base salary while commensurately reducing post adjustment levels, with effect from 1 January 2011.

9. Pursuant to resolution 65/248, and to the adjustment mechanism approved by the General Assembly in its decision 62/547, the annual net base salary of the judges of the International Court of Justice was revised from $166,596 to $168,878 effective 1 January 2011.

C. Adjustment of remuneration of the members of the Tribunal in line with that of the members of the International Court of Justice

10. In accordance with paragraphs 1 and 2 of the decision of the twentieth Meeting of States Parties (SPLOS/215), the level of remuneration of the members of the Tribunal was revised to $166,596 effective 1 January 2010, and further adjusted to $168,878 effective 1 January 2011.

11. As decided by the General Assembly, an increase of 1.37 per cent in the salary for the Professional and higher categories is offset by a commensurate reduction in post adjustment levels. As a result of this "no gain, no loss" approach, the increase would not require any additional appropriations to cover the judges' remuneration in 2011. This is shown by the tables below:

President

	Net base salary ($)	*Post adjustment multiplier (Hamburg)*	*Amount ($)*	*Exchange rate*	*Amount (€)*
December 2010 (A)	13 883.00	53.4	21 296.52	0.764	16 270.54
January 2011 (B)	14 073.16	51.9	21 377.13	0.761	16 268.00
Difference (B-A)			80.61		-2.54

Members

	Net base salary ($)	*Post adjustment multiplier (Hamburg)*	*Amount($)*	*Exchange rate*	*Amount (€)*
December 2010 (A)	4 627.67	53.4	7 098.85	0.764	5 423.52
January 2011 (B)	4 691.06	51.9	7 125.72	0.761	5 422.67
Difference (B-A)			26.87		-0.85

12. It is proposed that the Tribunal be authorized to apply the adjustment mechanism adopted by the General Assembly with regard to the International Court of Justice. This measure is required in order to ensure equivalence between the remuneration of the judges of the Tribunal and that of the members of the International Court of Justice, a principle that was adopted by the Meeting of States Parties in 1996 and has been continuously applied since then. The draft decision is attached as annex II to the present report.

III. Matters relating to the financial period 2011-2012

A. Costs relating to Case No. 16

13. On the basis of the schedule of proceedings agreed to by the parties, and in order to avoid unnecessary delay in the conduct of the case, 8 September 2011 has been fixed as the opening date of oral proceedings in Case No. 16 (*Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal*). Initial deliberations of the Tribunal will take place shortly before the hearing.

14. Consequently, in accordance with article 17 of the rules of the Tribunal (document ITLOS/8, available from www.itlos.org), judges whose terms of office expire on 30 September 2011 will continue to sit in Case No. 16 until its completion. The number of judges who will continue to sit in the proceedings relating to Case No. 16 will depend on the results of the triennial election to be held in June 2011 during the Meeting of States Parties.

15. In line with the practice followed in the past by the International Court of Justice in similar cases, the judges who have not been re-elected and who continue to sit in Case No. 16 will receive their annual remuneration until the completion of the case (early 2012) while the payment of their pension will be deferred.

16. The 2011-2012 budget of the Tribunal approved by the twentieth Meeting of States Parties (see SPLOS/217) makes provision for the costs in Case No. 16, including special allowance and daily subsistence allowance for the 21 members of the Tribunal and two judges ad hoc. Payment of special allowance and daily subsistence allowance will not create any additional expenditure given the fact that, with respect to Case No. 16, those allowances will be paid only to the judges participating in the case. However, as of 1 October 2011 and until the completion of Case No. 16, the Tribunal will have to pay an annual allowance (calculated on the basis of one third of the annual maximum remuneration and payable on a monthly basis) to the judges whose terms of office will have expired and who continue to sit

in Case No. 16, as well as to the Judges who will have been newly elected in June 2011.

17. The additional expenditures required in order to cover the payment of annual allowance to the seven judges whose terms of office expire on 30 September 2011 (if no judge is re-elected in June 2011) are estimated to be approximately €206,200 for the period from October 2011 to March 2012. From this amount should be deducted the amount of pension payments (approximately €103,100) which will be deferred until the completion of the proceedings in Case No. 16. On that basis, the maximum amount of additional costs would be approximately €103,100. The actual amount will depend on the results of the election.

18. No supplementary budgetary appropriation is requested to cover these additional costs. Instead, it is proposed to cover the additional expenditure of €103,100 by using savings from other budget lines under the section "judges". In the event that those savings are still insufficient, it is proposed that the Tribunal be authorized to transfer funds from the section "judges" under "case-related costs" to the section "judges" under "recurrent expenditures" to the extent required to cover the difference.

B. Surrender of reserves

19. In accordance with the decision of the Meeting of States Parties (SPLOS/98), the staff assessment accumulated in the special account as at 31 December 2003 was surrendered and deducted from the contributions of the States Parties to the 2005 budget. An amount of €38,593 was set aside to reimburse officials of the Tribunal who would be obliged to pay national taxes in respect of their remuneration paid by the Tribunal in 2004 and subsequent years. Since the financial period 2009-2010, there has been no provision in the budgets of the Tribunal for that purpose. The special account will therefore be closed and the amount of €38,593 will be surrendered to the States parties and deducted from their contributions to the 2012 budget of the Tribunal, in accordance with the relevant provision of the Financial Regulations of the Tribunal.

20. The budget for the financial period 2009-2010, in the amount of €17,515,100, was approved by the eighteenth Meeting of States Parties in June 2008 (SPLOS/180). In addition, the nineteenth Meeting of States Parties authorized the Tribunal to use part of the cash surplus from the 2007-2008 budget to finance an additional appropriation (€207,450) to implement the new salary system for the members of the Tribunal for the period from July 2009 to December 2010 (SPLOS/200).

21. However, the major part of the additional expenditures required to implement the new salary system has been financed by using savings from other budget lines within the section "judges" while using only €30,746 from the above-mentioned additional appropriation of €207,450. Accordingly, it is proposed that the unused balance of €176,704 from the additional appropriation be surrendered on an anticipatory basis to the States parties in 2011 and deducted from their contributions to the 2012 budget of the Tribunal, in accordance with the relevant provision of the Financial Regulations of the Tribunal.

IV. Action taken pursuant to the Financial Regulations of the Tribunal

A. Investment of funds of the Tribunal

22. In respect of the investment of funds of the Tribunal, regulation 9 of the Financial Regulations of the Tribunal stipulates the following:

> 9.1 The Registrar may make prudent short-term investments of moneys not needed for immediate requirements and shall inform the Tribunal and the Meeting of States Parties periodically of such investments.
>
> [...]
>
> 9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each fund or account.

23. During the years 2009 and 2010, the Tribunal's funds were kept in Chase Bank and Deutsche Bank in United States dollars and euros as short-term investments, which "are investments made for less than 12 months" according to rule 109.1 of the Financial Rules of the Tribunal. The funds yielded interest amounting to €94,763 during 2009 and 2010. This earned interest has been credited as miscellaneous income, in accordance with regulation 9.2 of the Financial Regulations of the Tribunal.

B. The Korea International Cooperation Agency trust fund

24. The Korea International Cooperation Agency (KOICA) offered to provide a grant of $150,000 pursuant to a memorandum of understanding signed between the Tribunal and KOICA on 9 March 2004. Its object is to finance the expenses of participants from developing countries in the Tribunal's internship programme.

25. In accordance with regulation 6.5 of the Financial Regulations of the Tribunal, a trust fund was subsequently established and a special euro bank account named "KOICA grant" was set up with Deutsche Bank for this purpose. When the funds, amounting to $150,000, were received from KOICA in March 2004 they were converted into €120,600 on the basis of the exchange rate of 0.804 fixed by the United Nations for March 2004.

26. In March 2006, the Tribunal received from KOICA its second contribution to the KOICA trust fund, in the amount of $100,000. This amount was converted into €84,400 on the basis of the exchange rate of 0.844 fixed by the United Nations for March 2006.

27. Following the signing of additional memorandums of understanding between the Tribunal and KOICA, further contributions totalling €422,045 were received between 2007 and 2009. An amount of €213,645 was paid to the Tribunal in February 2007, €128,400 on 5 May 2008 and €80,000 on 16 June 2009 in order to finance the internship programme of the Tribunal, the organization of regional workshops and the participation of students from developing countries in the summer academy organized by the International Foundation for the Law of the Sea.

28. The performance of the KOICA grant as at 31 December 2009, which is to be reported to the Meeting of States Parties in accordance with regulation 6.5 of the Financial Regulations of the Tribunal, is as follows (in euros):

Contribution 16 June 2009	80 000
Interest income	25
Total	**80 025**
Expenditure on participants and authorized activity	-114 211
Bank charges	-717
Account receivable	-5 249
Loss on exchange	-579
Reserves from prior periods	70 686
Bank balance	**29 955**
Available balance	**29 995**

C. Nippon Foundation trust fund

29. In March 2007, the Tribunal and the Nippon Foundation signed "The Nippon Foundation grant agreement". Pursuant to the agreement, the Nippon Foundation agreed to contribute an amount of €200,000 to "The Nippon Foundation — International Tribunal for the Law of the Sea Capacity-Building and Training Programme on Dispute Settlement under the United Nations Convention on the Law of the Sea".

30. In accordance with regulation 6.5 of the Financial Regulations of the Tribunal, a trust fund was subsequently established and a special euro bank account named "Nippon Foundation grant" was set up with Deutsche Bank. The purpose of the grant is to finance the expenses of participants from developing countries in the aforementioned programme.

31. The second contribution of €200,000 was made to the Tribunal on 27 March 2008, the third one, in the same amount, on 27 March 2009, and the fourth, in the amount of €230,000, on 26 March 2010. The performance of the Nippon Foundation grant as at 31 December 2010, which is to be reported to the Meeting of States Parties in accordance with regulation 6.5 of the Financial Regulations of the Tribunal, is as follows (in euros):

Contributions	430 000
Interest income	61
Total	**430 061**
Expenditure on participants and authorized activity	-361 174
Bank charges	-808

Account receivable	-14 903
Loss on exchange	-60
Accounts payable	2 758
Prior periods reserves	140 123
Bank balance	**195 997**
Available balance	**195 997**

D. Trust fund for the law of the sea

32. At its twenty-eighth session, the Tribunal approved the Registrar's proposal to establish a new trust fund for the law of the sea, in accordance with the Financial Regulations of the Tribunal. The Registrar subsequently established a new trust fund for the law of the sea with the Deutsche Bank in Hamburg. The trust fund is intended to promote the advancement of human resources in developing countries in the law of the sea and maritime affairs in general. Contributions to the trust fund will be used to give financial assistance for the participation of applicants from developing countries in the Tribunal's internship programme and the summer academy.

33. The first contribution to the trust fund, in the amount of €25,000, was made in 2010 by Korwind, a Hamburg-based company of the Republic of Korea working in the field of renewable energy. As at 31 December 2010, only bank charges in the amount of €132 have been recorded as expenditure, and the balance stands at €24,868.

Annex I

International Tribunal for the Law of the Sea

Budget performance report for the period 2009-2010 (in euros)

	Part/ section	Objects of expenditure	2009-2010 Approved budget (1)	Expenditure 2009 (2)	Expenditure 2010 (3)	Expenditure 2009-2010 Total (4) = (2)+(3)	Balance (5) = (1) - (4)	Additional appropriation 2009-2010[a] (6)	Balance including additional appropriation (7) = (5) + (6)	Total expenditure as a percentage of approved budget	
1	A	**Recurrent Expenditure**									1
2	1	**Judges**	**4 433 400**	**2 170 982**	**2 293 164**	**4 464 146**	**-30 746**	**160 395**	**129 649**		2
3		Annual allowances	2 715 700	1 387 007	1 481 811	2 868 818	-153 118	143 082	-10 036	100.35	3
4		Special allowances	788 600	359 089	370 626	729 715	58 885	17 313	76 198	90.55	4
5		Travel to session	267 600	103 332	102 908	206 240	61 360	0	61 360	77.07	5
6		Judges' pension scheme	587 100	313 725	317 380	631 105	-44 005	0	-44 005	107.50	6
7		Common costs	74 400	7 829	20 439	28 268	46 132	0	46 132	37.99	7
8	2	**Staff costs**	**7 054 600**	**3 463 117**	**3 530 585**	**6 993 702**	**60 898**	**0**	**60 898**		8
9		Established posts	4 620 000	2 290 842	2 324 972	4 615 814	4 186	0	4 186	99.91	9
10		Common staff costs	1 991 900	998 466	1 001 567	2 000 033	-8 133	0	-8 133	100.41	10
11		Reimbursement of national taxes	0	0	0	0	0	0	0		11
12		Overtime	39 000	14 278	14 598	28 876	10 124	0	10 124	74.04	12
13		Temporary assistance for meetings	210 500	92 750	95 736	188 486	22 014	0	22 014	89.54	13
14		General temporary assistance	121 100	40 936	52 788	93 724	27 376	0	27 376	77.39	14
15		Training	72 100	25 845	40 924	66 769	5 331	0	5 331	92.61	15
16	3	**Representation allowance**	**10 000**	**5 483**	**5 744**	**11 227**	**-1 227**	**0**	**-1 227**	112.27	16
17	4	**Official travel**	**185 300**	**100 734**	**58 702**	**159 436**	**25 864**	**0**	**25 864**	86.04	17
18	5	**Hospitality**	**13 900**	**4 454**	**8 717**	**13 171**	**729**	**0**	**729**	94.76	18
19	6	**Operating expenditures**	**2 771 400**	**1 321 990**	**1 314 949**	**2 636 939**	**134 461**	**0**	**134 461**		19
20		Maintenance of premises (including security)	2 033 100	1 014 218	980 915	1 995 133	37 967	0	37 967	98.13	20
21		Rental and maintenance of equipment	361 400	159 637	164 957	324 594	36 806	0	36 806	89.82	21
22		Communications	197 200	74 500	88 173	162 673	34 527	0	34 527	82.49	22

	Part section	Objects of expenditure	2009-2010 Approved budget (1)	Expenditure 2009 (2)	Expenditure 2010 (3)	Expenditure 2009-2010 Total (4) = (2)+(3)	Balance (5) = (1) - (4)	Additional appropriation 2009-2010 (6)	Balance including additional appropriation (7) = (5) + (6)	Total expenditure as a percentage of approved budget	
23		Miscellaneous services and charges (including bank charges)	41 200	15 025	19 172	34 197	7 003	0	7 003	83.00	23
24		Supplies and materials	123 900	58 560	50 522	109 082	14 818	0	14 818	88.04	24
25		Special services (external audit)	14 600	50	11 210	11 260	3 340	0	3 340	77.12	25
26	7	**Library and related costs**	**327 000**	**131 652**	**172 837**	**304 489**	**22 511**	**0**	**22 511**		26
27		Library — procurement of books and publications	234 600	111 579	119 832	231 411	3 189	0	3 189	98.64	27
28		External printing and binding	92 400	20 073	53 005	73 078	19 322	0	19 322	79.09	28
29											29
30	B	**Non-recurrent Expenditure**									30
31	8	Furniture and equipment									31
32		Purchase of equipment	**154 800**	66 869	86 152	**153 021**	**1 779**	**0**	**1 779**	98.85	32
33	9	Alteration to premises									33
34											34
35	C	**Case-related Costs**	**2 564 700**	**29 575**	**1 063 686**	**1 093 261**		**47 055**	**47 055**		35
36	10	**Judges**	**1 983 800**	**28 249**	**762 717**	**790 966**	**1 192 834**	**47 055**	**1 239 889**		36
37		Special allowances	1 604 000	11 442	665 219	676 661	927 339	43 554	970 893	41.07	37
38		Compensation to judges ad hoc	96 700	1 879	0	1 879	94 821	3 501	98 322	1.88	38
39		Travel to meetings, including judges ad hoc	283 100	14 928	97 498	112 426	170 674	0	170 674	39.71	39
40	11	**Staff Costs**	**580 900**	**1 326**	**300 969**	**302 295**	**278 605**	**0**	**278 605**		40
41		Temporary assistance for meetings	535 900	594	279 887	280 481	255 419	0	255 419	52.34	41
42		Overtime	45 000	732	21 082	21 814	23 186	0	23 186	48.48	42
43	12	**Miscellaneous**	**0**	0		**0**	**0**		**0**		43
44											44
45	D	**Working Capital Fund**	**0**	0		**0**	**0**		**0**		45
46											46
47		**Total**	**17 515 100**	**7 294 856**	**8 534 536**	**15 829 392**	**1 685 708**	**207 450**	**1 893 158**	**89.32**	47

[a] In accordance with SPLOS/200.

Annex II

Draft decision on the adjustment mechanism for the remuneration of members of the International Tribunal for the Law of the Sea

The Meeting of States Parties,

Considering that, in respect of the level of remuneration of the members of the International Tribunal for the Law of the Sea, the fourth Meeting of States Parties decided to maintain equivalence with the remuneration levels of members of the International Court of Justice,

Considering also that the General Assembly, in its decision 62/547 of 3 April 2008, decided to set, effective 1 April 2008, the annual net base salary of the members of the International Court of Justice at 158,000 United States dollars, with a corresponding post adjustment multiplier equal to 1 per cent of the net base salary, to which would be applied the post adjustment multiplier for the Netherlands, as appropriate, taking into account the adjustment mechanism as proposed by the Secretary-General in paragraph 77 of his report,[1]

Considering further that the adjustment mechanism adopted by the General Assembly in its decision 62/547 provides that "on the occasion of future revisions to the base scale applicable to staff in the Professional and higher categories that are effected through the consolidation of post adjustment multiplier points into the base scale with a corresponding readjustment in the post adjustment multipliers, the annual base salary of the members of the International Court of Justice also be adjusted by the same percentage and at the same time",

Decides that, on the occasion of future revisions to the base scale applicable to staff of the United Nations in the Professional and higher categories that are effected through the consolidation of post adjustment multiplier points into the base scale with a corresponding readjustment in the post adjustment multipliers, the annual base salary of the members of the Tribunal also be adjusted by the same percentage and at the same time as in the case of judges of the International Court of Justice.

[1] A/62/538.